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RAHAT-UL-QULOOB

Bi-Annual, Trilingual (Arabic, English, Urdu) ISSN: (P) 2025-5021. (E) 2521-2869
Project of **RAHATULQULOOB RESEARCH ACADEMY**,
Jamiat road, Khiljiabad, near Pak-Turk School, link Spini road, Quetta, Pakistan.
Website: www.rahatulquloob.com

Approved by Higher Education Commission Pakistan

Indexing: » Australian Islamic Library, IRI (AIOU), Tahqeeqat, Asian Research Index, Crossref, Euro pub, MIAR, ISI, SIS.

TOPIC:

Rights of Non-Combatants in Light of Classical Islamic Thought and International Humanitarian Law

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How to Cite: Dr. Saqib Jawad, and Dr. Muhammad Sohail. 2022. "ENGLISH: Rights of Non-Combatants in Light of Classical Islamic Thought and International Humanitarian Law". *Rahat-Ul-Quloob* 6 (1), 15-26. <https://doi.org/10.51411/rahat.6.1.2022/412>.

URL: <http://rahatulquloob.com/index.php/rahat/article/view/412>
Vol. 6, No.1 || January-June 2021 || English - Page. 15-26
Published online: 01-01-2022

QR. Code



Rights of Non-Combatants in Light of Classical Islamic Thought and International Humanitarian Law

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Abstract:

Islamic law of armed conflict prohibits killing of non-combatants and opinion of certain jurists that cause of war in Islam is disbelief, has no relevance with the protection of non-combatants. Under Islamic international law, the issue of cause of war has been distinguished from the conduct of war by classical Muslim jurists. As international humanitarian law (IHL) has been divided into *jus ad belum* (cause of war) and *jus in bello* (conduct of war), Islamic international law made this distinction before fourteen hundred years ago, though in an informal manner. Since the rules pertaining to both types of IHL were discussed together by Muslim jurists, various contemporary scholars presumed that the rules pertaining to the *jus ad belum* and *jus in bello* are the same in Islamic law. On the basis of same presumption, they opined that for those who have stated that the cause of war in Islamic law is disbelief, justified the killing of non-combatants. This view has been reflected in writings of various contemporary scholars. Whereas, according to the principles of Islamic jurisprudence, a general command can be specified for a particular territory, community or group of people and can also be abrogated. The critiques of Islamic international law, particularly on the issue of immunity of non-combatants, have resorted to the general principles of Islamic jurisprudence on the basis of their lack of understanding and ignorance of special commands regarding the immunity of non-combatants. Therefore, it is imperative to make the distinction, between the rules pertaining to the cause of war and conduct of war, clear in accordance with the classical Islamic thought, keeping in view the general protection available for non-combatants.

Key Words: Law of war, non-combatants, protection, international humanitarian law.

Introduction:

Many non-Muslim scholars have levelled baseless criticism against Islam regarding the rules of war and some of their views have been refuted and the rest need a response. For instance, Prof. Dr. Muhammad Munir has written a critique on John Kelsay's misconception that Islam has learnt humanitarian principles, such as the principle of distinction, from the pre-Islamic Arabian practices; that Imam *Al-Shafi'i* allowed the killing of all women whether combatants or non-combatants; that even the Prophet Muhammad (ﷺ) allowed the killing of women and children; and that children and women can be enslaved.¹ According to him, many scholars of the West, including John Kelsay have questioned the enormous contribution of Islam to bring humanity in warfare. Dr. Munir maintains that Islam, as a religion, introduced the most humane rules in warfare before other religions or faiths could do it². It has also been stated by many other scholars that the touchstone for waging war and using force against a particular community is not their religious identity, rather their aggression and crimes against Muslims or other

oppressors even belonging to other religions and communities.³

Several other researchers of modern times also followed the footsteps of Kelsay and misunderstood the history and true teachings of Islamic law of war⁴. For instance, Manuel E.F. Super vielle, in his work, states that the primary criterion of protection in Islamic law is ‘belief’ or ‘disbelief’.⁵ He went a step further by stating that “classical Islam considered believers of Islam as innocent, unbelievers were guilty... absolute non-believers could be killed even after surrender”.⁶ Whereas, classical Muslim jurists discussed in details the rules regarding cause of war and it is also clear from the general teachings of Islam that non-combatants have been protected irrespective of their ‘belief’.

Objectives of the Research:

The main objective of this research is to conduct a thorough analysis of Muslims as well as non-Muslim scholars over the issue and compare it with the writings of classical Muslim jurists. It came on the record that writings of classical Muslim scholars are misunderstood and misinterpreted by various scholars especially non-Muslims. Due to this misinterpretation, rules of Islamic law have been severely criticised, whereas the fact is that rules of humanitarian law have been introduced in Islamic law fourteen hundred years ago unlike IHL which started its growth much later. So, the actual text of Islamic rules of warfare and misrepresentation caused due to various reasons need to be highlighted and the latter is required to be removed.

Critical Approach of Non-Muslim Scholars:

It is true that Islamic law did not deal with the issues of international law as a distinct and independent subject like IHL. However, it does not mean that no attention was paid by Muslim jurists to this subject. The topics related to international law are dealt with by Muslim scholars under the topics of *Siyar* and *Jihad*. Although little attention was paid to this subject by *Hanbali* and *Maliki* jurists, but detailed rules have been elaborated and discussed by *Hanafi* and *Shafi*’ jurists.⁷ Since the rules of Islamic international law are also based on the general principles of Islamic jurisprudence, therefore, in order to comprehend Islamic international law, knowledge of the general principles of Islamic jurisprudence is necessary which lacks in non-Muslim scholars and on the basis of this anomaly, they have misunderstood and misconceived certain rules of Islamic law of war.⁸

Due to their lack of knowledge about the basic principles of Islamic law, many non-Muslim scholars have wrongly perceived many concepts and they have also influenced many Muslim writers in this regard. For instance, John L. Esposito says that like other historical religions, history of Islam, its religious texts and commands include both peace and violence. He further says that Prophet sent to every nation including Prophet Muhammad (ﷺ) were warriors and military leaders. According to him, initially all the religions including Judaism, Christianity and Islam permitted violence for self-defence, but their followers have extended said permission to include both holy and unholy wars and have at times justified their conquests and expansion of their lands and boundaries in the name of religion. According to him, religious extremists and believers justify their

violent actions on the basis of these historical religious texts.⁹ However, the term violence is always used in a negative sense and Esposito has mixed it with the concept of *Jihad* what he has tried to describe it a holy war and such war under the rules of Islamic law, can be waged in certain circumstances and by strictly following the rules of war and intermingling it with violence is unjust and misconceived.

It appears that some Muslim scholars, while adopting the theory that cause of war in Islamic law is *Kufr*, have stated that *Jihad* under Islamic law is obligatory in all circumstances, and no derogation in this regard is permissible. They while doing so have either intentionally or unintentionally adopted one opinion ignoring the others and described it the settled principle, whereas their opinion might be based upon the teachings of minority of Muslim jurists and opposed to the majority. In one such example, Abdullahi Ahmed An-Na'im says that the rules of war prescribed by Islamic law is consistent with historical context, but contradicts many aspects of modern international law.¹⁰ According to him, the theory of *Jihad*, as described under Islamic law, is one such example and he holds that according to this theory, it is the obligation and duty of all Muslims to wage war against the non-Muslims, until they are wither subjugated or submit themselves to the Muslim rule. According to him, no derogation can be made from this rule under Islamic law. *Jihad* can be suspended for a limited time period for a specific purpose, for instance, to prepare themselves better for the next time, but actual relation between a Muslim and non-Muslim state would be of war until the whole world submits to the rule of God. Peaceful relations can only be maintained temporarily and a few jurists have prescribed the time period of ten years in this regard.¹¹ Some non-Muslims and Muslim writers have adopted these concepts considering them settled principles, whereas the fact is that other opinions also exist of other Muslim jurists who have presented different concepts. The difference appears to be based on the basis of difference among the classical Muslim jurists about the cause of war under Islamic law which needs to be elaborated to make the proposition clear.

Classical Muslim Thought:

Work done by classical Muslim jurists on Islamic law of war suggests that classical Muslim jurists while working on it did not differentiate between international and domestic wars. Moreover, they have discussed the Islamic law of war in chapters like *Jihad* and *Siyar*.¹² As far as the protection under classical Muslim thought is concerned, there is difference of opinion among two main schools of thought in Islamic law, namely *Hanafi* and *Shafi'*. The difference appears to be based upon the difference in respect of cause of war under these schools of thought. In this regard, the primary source of *Shafi'* school of thought is *Kitab Al-Umm* and the same states that: Rabi has reported that *Shafi'* said: with reference to war against infidels, there are two commands. Whoever fights against polytheists, who are not the people of book, it is not allowed to take *Jizya* from them, and if Muslims are strong enough, they should fight them till they are killed or accept Islam and it is based on the saying of Almighty that: 'So when the sacred months have passed....' (Al-Tauba: 5) and on the basis of

the saying of the Holy Prophet (ﷺ) ‘I have been commanded to fight people until they say that there is no God but ALLAH, and when they say it, they will protect from me their blood and money and reckoning is before ALLAH’. And *Shafi’* says: and whoever is fought from the polytheists among the people of the book, they will be fought until they accept Islam or pay *Jizya* from their hands and show them under control. And if they pay it, it is not allowed for Muslims to kill them or to compel them on any other religion than theirs for the saying of Almighty ALLAH ‘fight against those who do not’ (Al-Tauba: 29).¹³

However, certain other jurists, particularly *Hanafis* have made a difference of opinion in this regard. The difference between Muslim jurists in this regard and their point of view becomes clearer from the discussion of protected persons contained in *Al-Hidayah*, the leading book of *Hanafi* school of thought which says that:

“It is not allowed to kill a woman or a child or old or those who are not capable to fight or blind’ because for us, killing is permissible only of those who fight and fighting is not established from these and on the same basis crusty fissure, and one whose right hand or leg is severed shall not be killed with difference and Al Shafi’ differs with us on this in respect of old and those who are not capable to fight and the blind because for him cause of war is Kufr and evidence in this regard has already been explained by us and it has been reported that the Holy Prophet (ﷺ) has prohibited the killings of children and minors and when the Holy Prophet (ﷺ) saw a woman killed, said: ‘she was not one who would have engaged in fighting so why she was killed’ he said: ‘except if any of them had an opinion in war or a woman becomes a leader’ in order to defeat the harm for the people and accordingly whoever fights among them shall be killed for repelling harm and as fighting is allowed as a general rule”.¹⁴

Imam Muhammad Bin Al Hasan Al-Shaybani is known to be father of Muslim International law. At the first phase, he wrote *Al-Siyar Al-Saghir*, but the book could not cover the entire discipline in all details. Therefore, after a very hard work, he was able to compile *Al-Siyar Al-Kabir* and its commentary has also been written by Imam Sarakhsi. Rules of public international law and IHL have been discussed in details and the book was written in the second century of Hijra and almost 1000 years ago when international law was introduced as an independent discipline by Hugo Grotius in the 17th century. Imam Muhammad has also discussed rules of IHL pertaining to distinction and protection of combatants in details and it has been stated in *Al-Siyar Al-Kabir* that:

Among the people at war, women, children, idiots and the old will not be killed for the words of ALLAH Almighty: “fight in the way of ALLAH those who fight you” and these people do not fight. And when the Holy Prophet (ﷺ) saw women killed, he referred to this and said: “she was not one who would have engaged in fighting, find Khalid and tell him: do not kill women and children”. He further says that though atheism is one of the grave crimes, but the matter is between a person and his Lord Almighty, and the punishment of such offence is postponed till the day of judgment,

but what is available for the people in this world, that is for their own benefit and that is repelling the harm of war, but gets suspended against a person who does not fight, rather benefit for Muslims is to let them live so that they become slaves for Muslims, but any of them (protected persons) fights then there is no harm to kill him because they have created the purpose for which they become liable to be killed, and becomes killing of one who is capable to fight permissible, then the one who actually fights becomes liable to be killed prior to that, and any of them (protected persons) kills another person, then a child and idiot should not be killed, however, there is no harm in killing a woman and the old, if captured, as they are liable to be inflicted punishment for their acts, and if anyone kills any of them before they start fighting, then there is no ransom or fine on him.¹⁵

Imam Al-Sarakhsi is one of the leading jurists on Hanafi jurisprudence to discuss *jus in bello*. He states that women, children and elderly are required to be protected under Islamic law of war for the reason that they are not fighting. However, if an elderly engages in planning the war and combat, he can be killed in return.¹⁶

According to classical Muslim jurists, harm inflicted on the non-Muslims could be against their life, property and personal liberty i.e., by enslavement. According to *Ibne-Rushd*, harm to be inflicted by way of enslavement is permissible against all categories of people including men, women, old and young except monks. One group of jurists maintained that monks are left to be unharmed and alone and they need not be captured or enslaved for the saying of the Holy Prophet (ﷺ) “leave them and that to which they have devoted themselves”. This opinion is also based on the practice of Caliph Abu Bakr (R.A.). Majority of the jurists are of the opinion that the Imam of Muslims has the choice regarding prisoners between their pardon, enslavement, execution, release against ransom and imposition of *Jizya*. However, according to another opinion of another group of jurists, execution of prisoners is not permitted and according to Al-Hasanibn Muhammad Al-Tamimi, there is consensus (*Ijma*) of Companions on this.¹⁷ This opinion and even the opinion of the majority reflect that polytheist are not always required to be killed even after their capture during war. Prisoners also include adult men, who according to one opinion of the jurists are prohibited to be killed. Since there is prohibition or at least option for killing of actual combatants upon their capture, absolute killing of non-combatants cannot be justified. It has also been laid down by *Ibne-Rushd* that there is no disagreement among the Muslim jurists over the killings of male polytheists who have attained puberty and wage war against Muslims. However, there is disagreement among them over slaying them after captivity. He further says that similarly, there is no disagreement among Muslim jurists that minors and women cannot be killed during war as long as they are not waging war against Muslims. However, it has also been discussed that if a woman fights, shedding her blood becomes permissible. The principle is based upon the act of the Holy Prophet (ﷺ) as he prohibited the killing of women and children and when he saw a woman slain in a war, said, “she was not one who would have engaged in

fighting”.¹⁸ These opinions of the classical Muslim jurists based upon the text of the Holy Quran and Sunnah of the Holy Prophet (ﷺ) make it clear that there is no absolute command or permission to kill all the polytheists as misunderstood by many non-Muslims, rather in some cases there is consensus among the Muslim jurists that certain categories of non-combatants cannot be killed. The saying of the Holy Prophet (ﷺ) further makes it clear that he prohibited the killing of women during war by stating that “she was not who would have engaged in fighting” which further makes it clear that the primary touchstone for killing of polytheists is fighting and people who do not fight have been protected (and ALLAH Almighty knows the Best).

This view is also affirmed by the opinions of the Muslim jurists regarding the hermits, the blind, the old, the chronically ill, the peasants and serfs. According to Imam Malik, neither the blind nor idiots or hermits are to be slain. He also says that among their wealth, enough should be left for them for their survival. He also says that the old and decrepit are also not to be slain. Ibn Rushd says that this is also the view of Imam Abu Hanifa and his disciples. According to Al-Thawri only old are to be spared and according to Al-Awza'i, old and peasants are to be spared. However, according to Imam Al-Shafi'i's most authentic opinion, all these categories of people are to be slain. The difference of opinion in this regard appears to be based upon the specification of some traditions with the general implication of the verses of the Holy Quran commanding to slay every non-believer irrespective of his status.¹⁹

Imam Muhammad also wrote *Al-Siyar Al-Saghir*. The book precisely deals with the issues of Muslim international law including booty, Kharaj and peace treaties. A portion of the same also deals with the issue of treatment of disbelievers by the Muslim army. The book has been translated and annotated by Dr. Mahmood Ahmad Ghazi in 1998. According to him, Westerners believe that the Dutch jurist Hugo Grotius is the father of international law, but Muslim jurists have worked on international law as an independent discipline in the seventh and eighth century i.e., almost 1000 years before Hugo Grotius.²⁰ Giving a detailed account of the work of early jurists, he says that:

According to early Islamic sources, Abu Hanifah (d. 150 AH) was the first Muslim jurist to co-mpose an independent work on international law under the title *Kitab al-Siyar*. Pursuant to the prevalent practice, the book was dictated by the teacher to his disciples who compiled and edited their respective notes with additions and modifications. Those to whom the book was dictated included Abu Yusuf (d. 182 AH), Zufar (d. 158 AH), Asad ibn 'Amr, Hasan ibn Ziyad (d. 204 AH), Hafs ibn Ghiyath, Muhammad ibn al-Hasan al-Shaybani (d. 189 AH), 'Afiyah ibn Zayd, and the teacher's own son Hammad (d. 189 AH), a namesake of his illustrious teacher, Hammad ibn Abi Sulayman (d. 120 AH). These editions were known separately by the names of their respective compilers, out of which the editions of Hasan ibn Ziyad, Muhammad ibn al-Hasan al-Shaybani and Ibrahim al-Fazari (d. 188 AH.) are well-known. Unfortunately, the earliest book on this subject by Abu Hanifah has not come down to

us in its original form. Like his other writings, Kitab al-Siyar was also compiled, edited and popularized by his disciples and successors in scholarship, Abu Yusuf and Muhammad ibn al-Hasan al-Shaybani. The latter prepared a small treatise known as Kitab al-Siyar al-Saghir. This book dealt with the opinions and rulings of Abu Hanifah and his major disciples about some of the leading issues and erstwhile burning questions in the field of international law.²¹

The study further shows that orthodox jurists of Islamic law have declared that non-combatants cannot be killed during armed conflict. In this regard, Dr. Wahba Al Zuhaili states that the cause of war is repelling of harm, and not the opposition in religion, as stated by *Hanafis*, that the *kuffr* in itself is not the cause of war, and the majority of Muslims are agreed that the killing of women, children and saints is not allowed in Islam. Although, some other Muslim jurists say that the cause of war in Islam is *Kuffr* but they are also agreed that women and children cannot be killed for the general protection granted to women and children in Islam²².

Dr. Mahmood Ahmed Ghazi, a famous scholar of international law in the twentieth and twenty first century, during his lectures on Islamic international law, states that all schools of thought of Islamic law are unanimous on the point and no renowned jurist disputes that when Muslims reach the battlefield and war is started, then only combatants would be attacked and non-combatants, as it is clear from the teachings of the Holy Prophet (ﷺ), shall be protected and attack on them is not allowed²³.

Dr. Muhammad Munir also highlighted the issue of POWs. According to him, the *Quran* mentions only two possibilities to deal with POWs, which include “*mann* (freedom gratis) and *fida*’ (ransom)²⁴. According to him, said verse of the Holy Quran was never superseded. He also mentions that the Holy Prophet (ﷺ) took ransom from the prisoners of *Badr*, whereas, the general practice of the Holy Prophet (ﷺ) was to set POWs free without any ransom. He further maintains that permanent enslavement of POWs and their execution never remained the general practice of Islam and instances of slaying POWs can rarely be found in Islamic history²⁵. Rules of Islamic law in this regard are supported with the following commandments of the Holy *Quran* and traditions of the Holy Prophet (ﷺ).

Islamic law as enunciated in the Holy *Quran*, clearly states that only combatants are fought and non-combatants cannot be fought. The Holy *Quran* in this regard says that: “*And fight in the way of God those who fight against you and do not transgress, indeed God does not like transgressors*”.²⁶

Many Traditions of the Holy Prophet (ﷺ) also clearly prohibit killing of non-combatants. For instance, it is also narrated by Ibn 'Umar that a woman was found killed in one of these battles; so, the Messenger of Allah (ﷺ) forbade the killing of women and children²⁷.

It is also noticeable fact that despite of several misunderstandings and criticism on Islamic law of war by the non-Muslims, contribution and importance of Islamic international law has also been acknowledged by several non-Muslims. In this regard,

Supervielle though on the one hand adopted a critical approach towards Islamic international law by referring some selective texts, but on the other hand, while acknowledging the importance and contribution of Islamic international law says:

This evolution of classic Islam was by no means universally accepted. Some Muslims adhered to the tradition of the Prophet Muhammad's example of clemency to the people of Mecca upon his return after the hijra to claim Mecca for the Muslims. Nobody was harmed; no blood was shed. Even under classic Islam absolute nonbelievers received some protection. For example, women, children and old men should be spared, but could be taken as slaves and their property confiscated. In sum, despite the difference in the two approaches, Westerners and Muslims equally recognized the need to restrict unnecessary death and destruction in war. Regardless of the early Islamic views concerning the rules for the conduct of war, Islamic states eventually played a "highly significant [role] in both the internationalization and humanization of the European law of war," shifting the basis away from Christian theology to natural law and humanist principles. During recent wars some Islamic states have complied with certain principles of the law of war.²⁸

About the rules on the conduct of war under Islamic law, he further adds:

The second teaching point is that Islamic culture, like many other cultures, has attempted to place limits on the death and destruction caused by war. The Qur'an contains several passages that restrict the use of force. As early as the ninth century, Islamic religious-legal scholars, or fuqaha, wrote opinions that laid foundations for the development of rules for war in accordance with Islam.²⁹

The above text and the opinions of the orthodox Muslim jurists make it quite clear that the benchmark, at least for *Hanafi* jurists, for killing polytheists is fighting and not disbelief which is also clear from the fact that their theory is based on the saying of Almighty in the Holy Quran that "fight in the way of ALLAH those who fight you" and it has been specifically stated by Imam Muhammad that despite of atheism being one of the gravest crimes, it is between a person and his Lord and fighting and war has nothing to do with the belief of a person. So, the *Hanafi* school of thought is of the firm opinion that the only reason for fighting is fighting itself from the other side and protection has been afforded to all other persons who are not capable of fighting or who do not fight. Another aspect of the protection is that at that time regular armies were not established and ordinarily all male members of the society use to take part in the war. Therefore, all male members of the society were considered combatants by the adversary and they were accordingly liable to be killed. Presently, regular armies have been established and separate identity has been given to them under the domestic laws and prevailing principles of IHL; non-combatants have been distinguished from them and have been given protection. Although there is still some dispute over certain categories of persons, groups and organizations, particularly non-state actors about their status under IHL as combatants or non-combatants, but basic principles of today's IHL also reflect that they have been incorporated on the same principles that

were introduced by Islamic law of war and through its interpretation by Muslim jurists almost fourteen hundred years ago.

Modern Application of Islamic Law of War:

The principles of Islamic law do not change with the efflux of time and same principles as laid down in the Holy Quran and Sunnah are still applicable. Referring to the same original sources, modern scholars are also of the opinion that the cause of war in Islamic law is the aggression and war itself and not disbelief. These scholars, in order to substantiate their version have resorted to the following verses of the Holy Quran: “Those who have been attacked are permitted to take up arms because they have been wronged-God has the power to help them-40 those who have been driven unjustly from their homes only for saying, ‘Our Lord is God.’ If God did not repel some people by means of others, many monasteries, churches, synagogues, and mosques, where God’s name is much invoked, would have been destroyed. God is sure to help those who help His cause-God is strong and mighty”.³⁰

At another place, Almighty ALLAH says that: “Why should you not fight in God’s cause and for those oppressed men, women, and children who cry out, ‘Lord, rescue us from this town whose people are oppressors! By Your grace, give us a protector and give us a helper!’? The believers fight for God’s cause, while those who reject faith fight for an unjust cause. Fight the allies of Satan: Satan’s strategies are truly weak”.³¹ The main reliance of Muslim scholars is on the verse of n Surah al-Baqarah, which states that: “Fight in God’s cause against those who fight you, but do not overstep the limits: God does not love those who overstep the limits”.³²

Based on above, majority of Muslim scholars is of the opinion that *casus belli* Islamic law is defence against aggression and not disbelief.³³ Modern writers, scholars and even organizations have admired the contributions of Islamic law. For instance, ICRC while praising the contribution of Islamic law states:

Islamic laws of war sought to humanize armed conflict by protecting the lives of non-combatants, respecting the dignity of enemy combatants, and forbidding deliberate damage to an adversary’s property except when absolutely required by military necessity. The following are the core principles of Islamic laws of war.³⁴

It further states that: Islamic law makes it abundantly clear that all fighting on the battlefield must be directed solely against enemy combatants. Civilians and other non-combatants must not be deliberately harmed during the course of hostilities.³⁵

Therefore, it is clear that Islamic international law has extended protection to non-combatants prior to any other legal system in a unique, elaborated and extensive manner. The protection afforded under Islamic law is based upon the fact that it is the primary object of Islamic law to fulfil the general commands of Islam (*Shariah*) and to meet the main objects of public interest (*Maslaha*). Whereas, modern international law has been framed on different parameters of Western Jurisprudence which might contradict the general commands of Islamic law.³⁶

Conclusion:

The above-mentioned discussion with regard to the protection of non-combatants under Islamic law makes it clear that Islamic law gives protection to various categories of non-combatants just like IHL. However, the difference is that at that time, regular armies were not formed, combatants were not assigned any distinctive uniform, sign or emblem and all male members of the society used to participate in hostilities, therefore all male members were to be considered combatants and women, children and certain other categories, as explained above, were considered protected. So the allegation of several non-Muslim scholars against Islamic law of armed conflict, over the protection of non-combatants, is baseless. Rather the fact is that Islamic international law was compiled as an independent discipline in the seventh and eighth centuries i.e. much before the international law and international humanitarian law and Islamic law also introduced the principles of international humanitarian law based on humane treatment at that time that are still applicable. The primary reason for the ignorance non-Muslim scholars of the actual rules of warfare in Islam appears to be their negligence to understand the writings of classical Muslim jurists. Rules of Islamic international law are also required to be comprehended while keeping in view the general rules of Islamic jurisprudence. Therefore, all the critics of Islamic international law and particularly non-Muslim scholars are required to take into consideration basic principles of Islamic jurisprudence and opinions of orthodox Muslim jurists regarding conduct of hostilities before forming or expressing any opinion regarding Muslim conduct of war.

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²Ibid.

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⁴ For instance, he says: "During the life of the Prophet Mohammed, religion, politics and war blended together as the Prophet used his followers as a force to make Allah's plan for social justice a reality on earth. Immediately upon the Prophet's death in 632 A.D., however, "deep divisions and conflicts revolving around leadership and authority" of the Islamic community erupted and continue to operate to this day". He further says: "An important difference in the approach between classic Islam and the modern law of war is simplified as follows. Classic Islam based protections primarily on the person's religious beliefs. (i.e., whether the person is a believer or not). The modern law of war bases protection on the person's status (i.e., whether the person is a combatant or not). Classic Islam considered believers of Islam as "innocent;" unbelievers were "guilty. Jews and Christians, as "people of the Book," (believers in the one true God) enjoyed certain protected status, but not to the same degree as Muslims. Absolute non-believers (those not of the Book) could be killed even after surrender; Muslims who abandoned the fight or surrendered should be spared".

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¹¹ Ibid.

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